

May 20, 2013

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte: WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208**
Petitions for Waiver – Adak Eagle Enterprises (filed May 22, 2012) and Windy City Cellular (filed April 3, 2012)

Dear Ms. Dortch:

On May 17, 2013, Monica Desai, counsel for Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), communicated with Priscilla Delgado Argeris (Legal Advisor, Commissioner Rosenworcel), Nicholas Degani (Legal Advisor, Commissioner Pai), Rebekah Goodheart (Legal Advisor, Commissioner Clyburn), and staff of the Wireline Competition Bureau (“WCB”) and Wireless Telecommunications (“WTB”): Ruth Milkman (Chief, WTB), Julie Veach (Chief, WCB), Sue McNeil (WTB), Jane Jackson (WTB), and Travis Litman (WCB), regarding the above-referenced petitions.¹ Ms. Desai expressed appreciation that the Bureaus did not deny the petitions, and emphasized that AEE and WCC would welcome the opportunity to discuss any remaining concerns. The companies have always stood ready, since they submitted their waiver applications, to provide whatever information the Bureaus have requested, and indeed have provided thousands of pages of information rapidly and without protest to every single question.

Ms. Desai stated that it would be consistent with the idea of a fair and transparent process for the Bureaus to (1) respond to the information the companies have put into the record to explain whether they have remaining concerns, and if so, what those specific concerns are; and (2) reveal what costs they would like the companies to cut, so that the companies can either move forward in making the instructed cuts, or if they cannot, at least explain what the ramifications would be of doing so. Ms. Desai stated that it would be unfair to issue a denial without such a discussion, as the companies have very diligently responded fully to every request made. Moreover, with each response, the companies have asked if there are remaining questions or concerns. It has been a distressing process for the companies to have to hear and respond to rumors regarding concerns, or rumors regarding shifting theories under which a denial may potentially be issued, without actually hearing specific feedback directly regarding the information and proposals submitted.

¹ See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, May 22, 2012 (“AEE Petition”); Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.*, April 3, 2012 (“WCC Petition”).

Consistent with the Commission's commitment to a transparent process with "no surprises," it would be helpful to hear directly what questions have been answered satisfactorily in the judgment of the Bureaus, and what, if any, are remaining concerns and the basis for those concerns. Otherwise, the companies are continuously left guessing as to whether the information provided was adequate, whether staff understands the responses or needs further information, whether staff disagrees with anything submitted, whether staff dislikes any aspects of any of the cost cutting measures both implemented or proposed that the companies have submitted thus far, and whether staff prefers something different – and if so, what that is.

On Friday, May 17, Ms. Desai offered information regarding the following three categories of information about which she had heard that the Bureaus might have concerns (but noted that she has not received direct confirmation regarding whether these categories or other categories are actually areas of remaining concern): (1) AEE's Administrative Building and its ownership by AEE principals Mr. Larry Mayes and Ms. Andilea Weaver; (2) the reasons for investing in particular assets; and (3) corporate salaries. AEE and WCC already have specifically and directly addressed these issues in previous filings, but would welcome the opportunity to discuss them further with staff, and below provide a summary of the information provided thus far to the Commission on these topics:

(1) AEE's Administrative Building.

AEE previously submitted detailed information regarding the lease of its administrative building in Anchorage.² As previously explained, L&A Property, which is owned by Larry Mayes, Chief Executive Officer of AEE and WCC, and Andilea Weaver, Chief Operations Officer of AEE and WCC, owns the building that houses corporate operations.

As also previously explained, Mr. Mayes and Ms. Weaver tried to find a building to rent to house the operations of AEE, but no one would extend them credit to rent a building because AEE did not have credit established when they started the company. As a result, Ms. Weaver and Mr. Mayes used personal funds to purchase the building. Ms. Weaver took money from her 401(k) plan, and Mr. Mayes refinanced his home in order to make it possible for AEE to lease space. RUS has reviewed and approved this lease arrangement.

As previously explained, Mr. Mayes and Ms. Weaver do not make a profit from leasing the administrative building to AEE. AEE's monthly lease payment for the building is the same amount as L&A Property's monthly mortgage payment for the property. Furthermore, the rent charged to AEE has never been increased since Mr. Mayes and Ms. Weaver purchased the building in 2007. Indeed, from the time L&A Property purchased the building, it has charged rent significantly lower

² See, e.g., Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated April 12, 2013 ("AEE/WCC April 12 Ex Parte"); Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated Feb. 28, 2013 ("AEE/WCC Feb. 28 Ex Parte"); Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Second Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, Attachment 2, dated Aug. 21, 2012 ("AEE/WCC Aug. 21 Ex Parte"); Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, Attachment 4, dated Aug. 20, 2012 ("AEE/WCC Aug. 20 Ex Parte").

than the rent advertised for the building by its previous owner at the time of purchase. All of this information is in the record.³

AEE analyzed the cost impact of moving its administrative offices into another leased building in Anchorage instead of leasing its current building from L&A Property. AEE provided an independent third-party appraisal of market rents for comparable buildings.⁴ This analysis reflects that the monthly lease payment per rentable square foot, currently paid for AEE's administrative building is below the fair market monthly rent per rentable square foot that could be charged for the building. The analysis also reflects that the current rent per square foot paid by AEE is below the market rents per square foot charged for comparable or inferior buildings in Anchorage.

As staff is aware, the building was purchased several years before the *USF/ICC Transformation Order* was issued, at a time when growth in customers and in AEE's operations was anticipated. This specific building was chosen with the idea that AEE would be growing over time, with the fishery and other private and government operations expanding, and parallel growth in population. As explained by the companies, even with the now reduced number of employees resulting from the jarring funding cuts, AEE and WCC still fully utilize the space provided in the current administrative building to house not only its staff but also the companies' customer service, IT, accounting, storage of all corporate paperwork, files, servers, and computers, and storage of all equipment that is then shipped to Adak for maintenance and repair operations when needed.⁵ Because the companies utilize all of the current space (minus three empty cubicles) to support their operations, it would be impractical to sublease space to a third party. Moreover, the design of the building (which was remodeled specifically to fit the needs of the companies) would make subleasing space impossible without another major and expensive remodeling.⁶

Additionally, AEE provided supplemental information reflecting the significant amount of moving expenses that AEE would have to incur if the company were to move operations from its current administrative building.⁷

Ms. Weaver further explained that in the initial stages, before Adak Telephone Utility ("ATU") was fully up and running and could afford its own personnel (and before ATU paid any salary to Ms. Weaver), her company, AAA Accounting, provided accounting services for the company. AAA paid non-regulated rent to AEE for office space. When the company was growing and ran out of space in the building, AAA exited the dedicated space. Although AAA maintains an address, Ms. Weaver does not employ AAA personnel to do work for AAA out of that building. After AAA exited the office space, AEE paid to remodel the space for use by members of AEE's staff.⁸

³ See AEE/WCC April 12 Ex Parte at 10-11; AEE/WCC Feb. 28 Ex Parte at 7-8; AEE/WCC Aug. 21 Ex Parte, Attachment 2; AEE/WCC Aug. 20 Ex Parte, Attachment 4.

⁴ See AEE/WCC April 12 Ex Parte, Attachment 3, AEE Administrative Building Rent Comparison.

⁵ See AEE/WCC Feb. 28 Ex Parte at 7.

⁶ See AEE/WCC April 12 Ex Parte at 11.

⁷ See AEE/WCC April 12 Ex Parte, Attachment 4, AEE Estimate of Moving Costs.

⁸ See AEE/WCC April 12 Ex Parte at 11.

If the Bureaus have any specific concerns regarding any of this information, or if the Bureaus have instructions for the companies regarding reducing particular expenses associated with the building that they lease, they would appreciate it if the Bureaus would explain their concerns to them, or provide cost-cutting instructions to them. If staff believes that the company should move to a different location, move to a smaller location, or do something else, it would be helpful to know. If the staff is satisfied with these responses, that would also be helpful to know.

(2) AEE Assets.

AEE previously submitted a detailed accounting and explanation of each asset the company owns and how it relates to provisioning of service.⁹ This information is provided again below. AEE has repeatedly asked Commission staff if there have been any questions or concerns regarding this information.

The companies have not been informed of specific concerns or given specific instructions. The companies have been told that staff has questioned whether it was necessary to, for example, invest in a retail store on the island or invest in a third cell site to provide better service. Ms Desai reminded staff that the companies would not have made the investments in the retail store or some of the other investments they made had they known that they would be hit with an 84% overnight flash cut in funding. Indeed, the companies did not hoard cash, pay out bonuses, or pay dividends – instead they each chose to reinvest USF and RUS monies into services, equipment, and staff in order to provide quality service (including the only 911 service, and the most comprehensive service) on the island.

As explained in prior filings in response to staff information requests, the companies invested in the following assets for the following reasons:

a. Underground fiber optic cable: This cable is necessary to provide communications to AEE's customers. The costs incurred to install this cable reflect the fact that AEE had to install armored cable to prevent damage from the large rats that are prevalent in Adak and that would otherwise chew through the fiber. AEE also incurred additional costs to dig through frozen, rocky terrain in order to bury the cable in the ground. Because the ground is still saturated with live ammunition, AEE had to receive specific approval from the Navy for routing the fiber, and was not permitted to dig more than 24 inches below the surface.

b. Vehicles and equipment: AEE bought two new Ford pickup trucks in 2006 that were necessary to support AEE's operations. Ms. Weaver and another staff member drove the trucks more than 400 miles to a port so that the vehicles could be transported to Adak by barge. The barge only delivers to Adak once a year (if that), so transportation of such equipment has to be carefully planned well in advance. The other four vehicles acquired by AEE were bought used from contractors in Adak. These vehicles include two vans used to splice cable and hold inventory, a flatbed truck used for maintenance and construction, and a 1996 Chevy pickup truck used for maintenance and construction. Given the extreme weather and terrain conditions in Adak, these vehicles are necessary to provide service in

⁹ See AEE/WCC Aug. 20 Ex Parte at 10-11.

rough terrain and a minimal level of redundancy in the event a vehicle breaks down. Prior to 2011, there was no mechanic on the island to repair and maintain vehicles.

c. Alaskan HT Galley boat: This boat was necessary to provide service to the fish plant and to navigate the area under the dock in order to provide fiber to the port. Additionally, the boat was purchased for the purpose of planting fiber related to providing service to a planned missile defense system and a floating radome that was to be located off the coast of Adak. The cost to maintain the boat is minimal.

d. Multiple computers: AEE has approximately 11 Dell desktop computers, of which six are located in the Anchorage office and five are located in Adak. Additionally, AEE utilizes approximately four laptop computers. Each of these computers is necessary for AEE's employees to perform their jobs. Initially in 2004, AEE leased its computers from Dell before subsequently purchasing them. Only three of these computers have recently had their hard-drives replaced.

e. Software: AEE utilizes software necessary to support its switch and other operations, including Excel, a pdf program, switch software, and accounting software.

f. Furniture: The furniture purchased by AEE includes chairs, desks, filing cabinets, and other basic furniture in Anchorage and on Adak Island, necessary for the company's employees to perform basic duties and for the company's four-plex.

g. Two office remodels: One remodel was for the purpose of building office work stations for its employees. The second remodel was for the purpose of providing a basic employee break room with a refrigerator. The office work stations and break room include nothing that would not be expected in a standard office setting.

h. Artwork: AEE purchased 15 framed posters with motivational sayings, and a photograph of a Cook Inlet Arm that came with the conference room.

i. Snow removal equipment: Given that snow can accumulate quickly on Adak, AEE has one truck snow plow that is necessary to plow the entrance to AEE's Adak office and to clear snow in order for technicians to access and maintain AEE's facilities.

j. Lawnmower: A lawnmower is needed for AEE to maintain the yard at the small four-unit building where the company houses its technicians and contractors. There is no hotel on Adak, and the units provide the most inexpensive housing option.

k. Concrete saw: The purchase of this saw was necessary because such a saw is not available for lease or rental from any company on Adak Island. AEE requires this type of saw to cut through the concrete roads in Adak and to perform maintenance on concrete buildings.

Retail Store: Additionally, as explained in prior filings, WCC invested in the retail store on Adak Island in order to provide its customers with service that is comparable to the service available to consumers in other areas of the country.¹⁰ Given that consumers in other parts of the U.S. are able

¹⁰ See AEE/WCC April 12 Ex Parte at 5-6.

to visit a store to view and try out different phones before making a purchase, WCC believed it was important for the company to provide the same opportunity for its customers on Adak Island. The store also is the only location where residents on the island can use free Internet service. Moreover, the retail store space is used by WCC to store routers, chargers, cases and other related items for customers. WCC made that investment with the expectation that it would be used to serve the community for many years to come.

The retail store has only been open since January 1, 2012, but its construction was the product of several years of planning and investment that began well before the *USF/ICC Transformation Order* was issued. The only significant ongoing costs of operating the store are a low monthly rent and the salary of the retail store clerk, which currently is at part-time status.

Had WCC known at the time it was planning the retail store that the FCC would slash its funding overnight by 84%, it would not have invested in the retail store. Given that significant planning and investment was made in order to open the store, and given that continued operational costs are low, WCC believes it makes sense to continue store operations. If the Commission disagrees, then WCC can close the store. Although the sunk investment would be wasted, the annual operating cost would be saved. All of this information is in the record.¹¹ It would be helpful to know what the staff would like the company to do.

Warehouse: Also as previously discussed, as a result of the devastating funding cuts, the companies have postponed investing in the planned construction of a warehouse that is needed to house equipment, vehicles, and maintenance operations in a heated facility protected from the severe weather conditions on Adak Island.¹² The equipment and vehicles are essential for the companies' operations and include items such as fiber, outside plant equipment, a fiber blower, conduit, concrete for road repairs, a concrete saw, snow removal equipment, a splicing van, and utility trucks.

Currently, the companies pay a monthly rent to lease three smaller, unheated warehouses that leak and do not provide adequate protection from the island's severe weather for the company's assets. As a result, the essential equipment and vehicles are deteriorating and at risk of ruin. Completion of the planned warehouse would result in long-term savings going forward.¹³ Significantly, AEE planned construction of this warehouse well before its funding was cut by the *USF/ICC Transformation Order*, and RUS already approved the construction. Moreover, the concrete needed to build the warehouse is already on location and will ruin if not used in the near future. AEE already paid a significant expense to have the concrete and other necessary building materials for the warehouse purchased and shipped to Adak Island by barge and would be unable to incur the expense of transporting these materials off the island.

Cell Sites: The companies also invested in building two cell sites – one in downtown Adak and one at White Alice – again in order to provide better quality service on the island. As a result of this

¹¹ See AEE/WCC April 12 Ex Parte at 6-7; AEE/WCC Aug. 21 Ex Parte at 4.

¹² See AEE/WCC Feb. 28 Ex Parte at 6-7; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, 3, dated Nov. 20, 2012 ("AEE/WCC Nov. 20 Ex Parte").

¹³ See AEE/WCC Feb. 28 Ex Parte at 6, Attachment 2; AEE/WCC Nov. 20 Ex Parte at 3, Attachment 1.

investment, the companies are able to provide service into portions of the Adak service area beyond the portion of the downtown area served by their competitor, including into otherwise unserved remote areas of the island and into the sea where residents, government researchers, public safety personnel, fishermen and contractors regularly require service.¹⁴ In particular, the coverage provided by WCC's White Alice site is critical for public safety and has been instrumental in facilitating emergency rescue operations.¹⁵ As explained previously, the White Alice site is necessary for WCC to meet its obligations to serve its entire study area.¹⁶ The site covers population in the western part of the study area that is not reached from WCC's downtown cell site. Not only do roughly 10% of WCC subscribers live in this remote area, which is within the Adak study area but outside the downtown area, but the site also supports the Maritime Exchange of Alaska's vessel tracking network, which is relied on by the Coast Guard, the State of Alaska, and the maritime community. Additionally, the site provides coverage for the far side of Adak Island for environmental researchers and contractors where coverage was previously blocked by mountains.¹⁷

WCC also canceled construction of a third cell site at Clam Lagoon, which had been planned prior to the *USF/ICC Transformation Order* for the purpose of providing improved coverage to the northern portion of WCC's study area and network redundancy needed to prevent service interruptions that would otherwise occur if another cell site experiences operational problems – a result that often occurs because of the severe weather on Adak Island. As explained by the chief of the Adak Police Department, additional cellular towers are needed on Adak Island to provide wireless coverage necessary to support the community's 911 system and public safety operations in emergency situations.¹⁸ The Clam Lagoon site would also have offered expanded service on the island. WCC had already undergone six months of planning and expended resources, but canceled construction in the wake of the *USF/ICC Transformation Order* to reduce expenses, thereby saving the company the cost of completing construction of the site after the FCC's unexpected funding cuts. All of this information is in the record.¹⁹

¹⁴ See April AEE/WCC April 12 Ex Parte at 15-16; AEE/WCC Feb. 28 Ex Parte at 10; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, 3-4, dated May 21, 2012 ("AEE/WCC May 21 Ex Parte"); WCC Petition at 6-7; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 5, dated Dec. 6, 2012; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 5, dated Sept. 4, 2012; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 6, dated June 11, 2012 ("AEE/WCC June 11 Ex Parte").

¹⁵ See AEE/WCC Feb. 28 Ex Parte at 10.

¹⁶ See AEE/WCC June 11 Ex Parte at 3, 6.

¹⁷ See AEE/WCC June 11 Ex Parte at 3, 6; AEE/WCC May 21 Ex Parte at 3.

¹⁸ See AEE/WCC Feb. 28 Ex Parte, Attachment 1.

¹⁹ See AEE/WCC Feb. 28 Ex Parte at 4-5; AEE/WCC May 21 Ex Parte at 3-4; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, 2-3, dated May 17, 2012; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 5-6, dated May 4, 2012.

Ms. Desai emphasized that all of these investments were planned and made before the companies had any idea that their funding would be severely and unexpectedly slashed overnight, and were made with the good faith belief and understanding by the companies that USF and RUS monies should be reinvested in providing better quality service. If the Bureaus believe that any of these assets should now be sold or no longer be maintained, then the companies would like to hear directly regarding any specific instructions that the Bureaus would like to provide.

(3) Salaries.

AEE and WCC previously submitted detailed information reflecting why they believe their employee salaries are in line with comparable salaries at other companies.²⁰ As detailed previously, overall salary expenses decreased significantly from 2011 to 2012, and from 2012 to present, salaries again were reduced significantly as a result of the cost-cutting measures already taken by the companies, including the permanent elimination of five positions and the voluntary reduction and pay freeze in the salaries of the companies' CEO and COO.²¹

The companies provided a chart specifically comparing the CEO's and COO's 2012 and 2013 salaries to the salary range data provided by NTCA and the Alaska Department of Labor.²² The actual executive salary figures in the comparison chart are lower than the salary figures contained in the AEE salary chart provided in Attachment 1 of the April 12 ex parte because the figures in Attachment 1 included vacation payouts, as well as additional salary that is allocated to non-regulated entities. The NTCA and Alaska Department of Labor salary figures reflect only base pay. When the vacation payouts and additional salary amounts allocated to non-regulated entities are not included in the AEE/WCC executive salary figures listed in the comparison chart, the CEO's and COO's 2013 base salary are further reduced.²³

Moreover, the salaries listed for AEE and WCC executives do not reflect their entire salary history during which the CEO and COO did not take any salary for the first two years of operations. And, unlike a majority of other presidents/general managers and a vast majority of other managers and supervisors at companies surveyed by NTCA, AEE and WCC executives do not receive any cash bonuses. Additionally, it is important to note that the salary ranges provided by the Alaska Department of Labor are not specific to the telecommunications industry and reflect salary data from non-specialized industries, as well. Taking all these factors into account, the companies believe that AEE and WCC executive salaries are reasonable and in line with salaries for comparable positions. Nonetheless, Mr. Mayes and Ms. Weaver have volunteered to take a percentage pay cut and a multi-year salary freeze.²⁴ The companies, however, heard nothing from staff regarding this salary information, including any reaction to their voluntary salary cuts and salary freeze. If the Bureaus are satisfied with these responses, it would be helpful to know. If the Bureaus would like to

²⁰ See AEE/WCC April 12 Ex Parte at 6.

²¹ See AEE/WCC April 12 Ex Parte at 6; AEE/WCC Feb. 28 Ex Parte at 3-4.

²² See AEE/WCC April 12 Ex Parte, Attachment 2.

²³ See AEE/WCC April 12 Ex Parte, Attachment 2.

²⁴ See AEE/WCC April 12 Ex Parte at 6.

set the salaries of the executives at a specific level, the companies would appreciate it if staff would tell the companies what salary they believe is appropriate, so that they do not have to continue guessing as to what staff will approve.

The companies reiterate that they have submitted overwhelming evidence to support approval of a waiver, and overwhelming evidence to support approval of a long-term glide path that will allow the companies to transition closer to the price cap. A reasonable, long-term glide path would allow the Commission to fulfill its policy objectives and its many commitments regarding fair implementation for the *USF/ICC Transformation Order*. A reasonable long-term glide path would also respect the fact that the companies have made substantial, recent investments to provide quality service in an extremely high-cost area, are the only providers of service to significant portions of Adak Island where people require service, and have outstanding RUS loans incurred specifically for the purpose of provisioning service.

Respectfully submitted,



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